

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

05 3278

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UNITED STATES OF AMERICA,

Plaintiff,

-against-

WINDING ROAD ESTATES, INC.,  
WINDING ROAD PROPERTIES, INC.,  
and approximately Ten Acres of Land,  
more or less, located at 501 Winding  
Road, Oyster Bay, New York,

Defendants.  
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VERIFIED COMPLAINT

Civil Action No. \_\_\_\_\_

WEXLER, J.

WALL M.J.

The United States of America, by authority of the Attorney General of the United States and through the undersigned counsel, acting at the request of and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), brings this Verified Complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action brought pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9601-9675, regarding the Claremont Polychemical Corporation Superfund Site ("Site") in the Village of Old Bethpage, Town of Oyster Bay, Nassau County, New York. Plaintiff, the United States, seeks: (a) reimbursement from defendants Winding Road Estates, Inc. ("W.R. Estates") and Winding Road Properties, Inc. ("W.R. Properties") of response costs incurred or to be incurred by the United States for response



actions regarding the Site; and (b) a recovery in rem of response costs constituting the United States' lien pursuant to Section 107(1) of CERCLA, 42 U.S.C. § 9607(1) (the "CERCLA lien"), against defendant Ten Acres of Land, more or less.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action and jurisdiction in personam over defendants W.R. Estates and W.R. Properties pursuant to 42 U.S.C. § 9607(a), 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. This Court has jurisdiction *in rem* over defendant Ten Acres of Land pursuant to 42 U.S.C. § 9607(1)(4), 28 U.S.C. § 1655, and Federal Rule of Civil Procedure 4(n).

4. Venue is proper in this judicial district for the *in personam* claims pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1391(b), 1391(c) and 1395, because the claims arose, and the actual or threatened release of hazardous substances occurred, in this district.

5. Venue is proper in this judicial district for the in rem claim pursuant to Section 107(1)(4) of CERCLA, 42 U.S.C. § 9607(1)(4), and 28 U.S.C. § 1391(b), because defendant Ten Acres of Land is located, and EPA's response actions at the Site occurred, in this district.

### **DEFENDANTS**

6. Defendant W.R. Estates is a New York corporation which currently owns three parcels of land, referred to as Lots 283, 295, and 296, upon which Claremont



Polychemical Corporation (“CPC”) operated a facility (“Facility”) and formerly conducted business at times material hereto. Defendant W.R. Estates was the owner of those parcels, as described in paragraph 8(b) and (c), below, at times relevant to this matter.

7. Defendant W.R. Properties is a New York corporation which currently owns one parcel of land, referred to as Lot 267, upon which CPC operated its Facility and formerly conducted business at times material hereto. Defendant W.R. Properties was the owner of that parcel, as described in paragraph 8(a), below, at times relevant to this matter.

8. Defendant Ten Acres of Land, located in the Town of Oyster Bay, New York, is comprised of the afore-mentioned four parcels of property which constitute the former CPC Facility. The four parcels are (a) Lot 267, formally identified as Section 47, Block A, Lot 267, as described in an April 24, 1967 deed recorded in the Nassau County Clerk’s Office at Liber 7659, Page 299; (b) Lots 283 and 295, formally identified as Section 47, Block A, Lots 283 and 295, as described in a December 19, 1973 deed recorded in the Nassau County Clerk’s Office at Liber 8630, Page 233; and (c) Lot 296, formally identified as Section 47, Block A, Lot 296, as described in a December 1, 1969 deed recorded in the Nassau County Clerk’s Office at Liber 8069, Page 482.

9. Defendant Ten Acres of Land is owned by defendants W.R. Estates and W.R. Properties, both of whom have received notice of their potential liability.



## STATUTORY BACKGROUND

10. CERCLA was enacted in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances and other pollutants and contaminants and for funding the costs of such abatement and related enforcement activities, which are known as "response" actions. 42 U.S.C. §§ 9604(a), 9601(25).

11. Under Section 104(a)(1) of CERCLA, as amended:

Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment . . . .

42 U.S.C. § 9604(a)(1).

12. For CERCLA response actions and enforcement purposes, the Administrator of EPA is the President's delegate, as provided in operative Executive Orders, and, within certain limits, the Regional Administrators of EPA have been re-delegated this authority.

13. Under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a):

(1) [T]he owner and operator of a . . . facility, and (2) any person who at the time of disposal of any hazardous substances owned or operated a . . . facility at which such hazardous substances were disposed of . . . shall be liable for – (A) all costs of removal or remedial action incurred by the United



States Government or a State . . . not inconsistent with the national contingency plan; . . .

14. Under Section 107(I)(1) of CERCLA, 42 U.S.C. § 9607(I)(1):

All costs and damages for which a person is liable to the United States under [Section 107(a) of CERCLA] . . . shall constitute a lien in favor of the United States upon all real property and rights to such property which – (A) belong to such person; and (B) are subject to or affected by a removal or remedial action.

### GENERAL ALLEGATIONS

15. From approximately 1966 through 1980, CPC coated metal products, manufactured inks and pigments for plastics, coated metallic flakes, and vinyl stabilizers at its Facility. The wastes generated by these manufacturing processes at the Facility included organic solvents, resins, and wash wastes (in the form of mineral spirits).

16. Defendant Ten Acres of Land includes a 35,000 square foot building ("Facility building") which included a steam distillation solvent recovery system. Five treatment basins, each with a 5,000 gallon capacity, were located west of the Facility building and received sludges during its operation. Six above-ground tanks, many of which contained wastes, were located east of the Facility building. The Facility property also included an underground tank farm, leaching basins, dry wells, and a water supply well.

17. EPA listed the Site on the National Priorities List ("NPL") on June 1, 1986. The NPL was established pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and is found at 40 C.F.R. Part 300, App. B. The NPL is a list of those sites at which there are releases of hazardous substances, and which EPA has ranked as having the highest



priority for remediation or other response action.

18. EPA conducted a preliminary evaluation of the Facility in July 1988, which revealed the presence of hazardous substances in drums, treatment basins, above-ground tanks, and a sump. These hazardous substances came to be located in these waste containers as a result of CPC's operations at the Facility.

19. In September 1988, EPA commenced a response action at the Site which entailed overpacking the drums at the Site and stabilizing the contents of the various other waste containers.

20. In August 1989, EPA completed a remedial investigation and a feasibility study ("RI/FS"). The purpose of the RI/FS was to identify the contents of the drums and various waste containers at the Site and to determine the appropriate method for their disposal.

21. In September 1989, EPA issued a record of decision ("1989 ROD") in which it selected a remedy to address the drums and other containers of hazardous substances that were the subject of the 1988 response action. The remedy comprised the testing, bulking, consolidation, and off-site disposal of the drums and their contents as well as hazardous substances in the other waste containers. The response action selected in the 1989 ROD is also referred to as the second operable unit, or "OU2", portion of the work at the Site.

22. In July 1990, EPA completed a second RI/FS ("1990 RI/FS") at the Site in which it evaluated the nature and extent of contamination associated with various



environmental media, including Site soils and groundwater, the Facility building, and the waste storage tanks.

23. According to the 1990 RI/FS, (a) surface soils at the Site were contaminated with metals, including cadmium, copper, lead, magnesium and zinc; (b) the Site subsurface soils were contaminated with volatile organic compounds ("VOCs") such as tetrachloroethene (commonly referred to as "PCE"), 1,2-dichloroethene, trichloroethene, acetone, toluene, 2-butanone, xylenes, 4-methyl-2-pentanone, bis(2-ethylhexyl) phthalate, benzoic acid, and chloroform; (c) the Site groundwater was contaminated with VOCs, including PCE, trans-1,2-dichloroethene, trichloroethene, 1,1,1-trichloroethane, methylene chloride, xylene, and vinyl chloride, and with metals, including arsenic, chromium, lead, and manganese; and (d) the Facility building was contaminated with VOCs, including bis(2-ethylhexyl) phthalate, and metals, including aluminum and copper.

24. The substances identified in paragraph 23 are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

25. On September 28, 1990, EPA issued a second record of decision ("1990 ROD"), in which it selected a remedial action to address the environmental conditions considered in the 1990 RI/FS. The remedial action selected in the 1990 ROD included the following components: the removal of underground storage tanks; treatment of PCE-contaminated soils via low-temperature enhanced volatilization; treatment of the contaminated groundwater underlying the Facility ("On-Property Groundwater") through the use of an air stripping/carbon absorption system; treatment of the contaminated



groundwater that is down-gradient of the Facility property ("Off-Property Groundwater") through the use of an air stripping/carbon absorption system; and decontamination of the Facility building.

26. EPA then separated the five components of the remedial action into five operable units ("OUs") as follows: EPA designated the removal of underground storage tanks as OU1; the treatment of the contaminated soils as OU3; the treatment of the On-Property Groundwater as OU4; the treatment of the Off-Property Groundwater as OU5; and the decontamination of the Facility building as OU6.

27. EPA has completed OU1, OU3, and OU6. EPA has constructed and is operating the treatment system designated as OU4.

28. There is a groundwater treatment system at the Old Bethpage Landfill Superfund Site ("OBL Site") which is located near and downgradient from the Site. The OBL Site groundwater treatment system includes three groundwater recovery wells and a treatment system. In September 2000, EPA issued an explanation of significant differences from the remedy selected in the 1990 ROD ("2000 ESD") which (a) memorialized EPA's determination that the OBL Site groundwater treatment system would be effective in containing and treating the Site's Off-Property Groundwater, and (b) modified the 1990 ROD as it pertained to OU5 to provide that the Off-Property Groundwater should be treated using the OBL site's existing groundwater treatment system. The OBL groundwater treatment system continues to operate, capturing and treating the Site's Off-Property Groundwater. EPA has incurred response costs at the Site



through providing funding for the OBL groundwater treatment system.

29. After issuance of the 1990 ROD, EPA discovered the following three new areas of contamination at the Site: a large pile of debris on Lot 296 which was contaminated with hazardous substances; buried asbestos on Lot 296; and VOCs and cadmium in the soils under the Facility building.

30. In May 2001, EPA authorized funding for a pilot study to evaluate the use of a soil vapor extraction system ("SVE") to treat the VOCs in the soils under the Facility building.

31. In 2002, EPA performed response activities related to the excavation and proper disposal of the buried asbestos and surrounding soils on Lot 296.

32. In April 2003, EPA issued a second explanation of significant differences from the remedy selected in the 1990 ROD ("2003 ESD") which authorized the performance of a remedial action comprising (a) the operation of the SVE system until the VOC concentrations under the Facility building reach health-based levels; and (b) removal and disposal of the contaminated debris pile located on Lot 296.

33. EPA has completed the debris pile response activities and is continuing to operate the SVE system.

34. The United States has incurred, and continues to incur, response costs in performing response actions, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), at the Site.

35. On August 7, 1998, EPA notified W.R. Estates and W.R. Properties of their



potential CERCLA liability in connection with the Site.

36. On August 7, 1998, EPA notified W.R. Estates and W.R. Properties of its intent to file notice regarding its CERCLA lien on defendant 10 Acres of Land, pursuant to Section 107(1) of CERCLA, 42 U.S.C. § 9607(1). The notification provided an opportunity for defendants to contest the proposed lien and they did not do so.

37. On October 8, 1998, EPA filed and perfected the CERCLA lien in the Nassau County Clerk's Office.

FIRST CLAIM FOR RELIEF  
W.R. ESTATES' CERCLA LIABILITY AS AN OWNER  
PURSUANT TO 42 U.S.C. §§ 9607(A)(1) AND (2)

38. The United States realleges and incorporates paragraphs 1 through 37 as if fully set forth herein.

39. The Site, including defendant Ten Acres of Land, is a "facility" within the meaning of Sections 101(9) of CERCLA, 42 U.S.C. § 9601(9).

40. There have been "releases" or "threatened releases," within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of hazardous substances at or from the Site.

41. The United States' actions in response to the releases or threatened releases of hazardous substances at or from the Site constitute "removal" or "remedial" actions as defined by Sections 101(23) and 101(24) of CERCLA, 42 U.S.C. §§ 9601(23) and 9601(24), for which the United States has incurred costs of response, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).



42. The response actions taken and the response costs incurred by the United States at the Site were not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan, which was promulgated pursuant to Section 105(a) of CERCLA and is codified at 40 C.F.R. Part 300.

43. W.R. Estates is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

44. W.R. Estates is liable to the United States pursuant to Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), as the current owner of the Facility.

45. W.R. Estates is liable to the United States pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as the owner of the Facility at the time of disposal of hazardous substances at the Facility.

46. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), W.R. Estates is jointly and severally liable to the United States for response costs incurred and to be incurred in connection with the Site.

SECOND CLAIM FOR RELIEF  
W.R. PROPERTIES' CERCLA LIABILITY AS AN OWNER  
PURSUANT TO 42 U.S.C. §§ 9607(A)(1) AND (2)

47. The United States realleges and incorporates paragraphs 1 through 46 as if fully set forth herein.

48. W.R. Properties is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

49. W.R. Properties is liable to the United States pursuant to Section 107(a)(1)



of CERCLA, 42 U.S.C. § 9607(a)(1), as the current owner of the Facility.

50. W.R. Properties is liable to the United States pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as the owner of the Facility at the time of disposal of hazardous substances at the Facility.

51. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), W.R. Properties is jointly and severally liable to the United States for response costs incurred and to be incurred in connection with the Site.

THIRD CLAIM FOR RELIEF  
CERCLA RECOVERY IN REM AGAINST DEFENDANT TEN ACRES OF LAND

52. The United States realleges and incorporates paragraphs 1 through 51 as if fully set forth herein.

53. Pursuant to Section 107(l)(1) of CERCLA, 42 U.S.C. § 9607(l)(1), response costs incurred by the United States in connection with the Site constitute a CERCLA lien upon the real property which is subject to or affected by the response actions taken by EPA at the Site, including defendant Ten Acres of Land.

54. Pursuant to Section 107(l)(4) of CERCLA, 42 U.S.C. § 9607(l)(4), the United States is entitled to recover the costs constituting the CERCLA lien through this claim in rem.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, prays that this Court:

A. Enter judgment in favor of the United States holding W.R. Properties and W.R. Estates jointly and severally liable for response costs incurred and to be incurred in



connection with the Site, including interest, in an exact amount to be proven at trial; and

B. Order that defendant Ten Acres of Land be sold at such time in a manner consistent with overall site remediation and that the proceeds from such sale be paid to the United States in reimbursement of response costs incurred and to be incurred in connection with the Site;

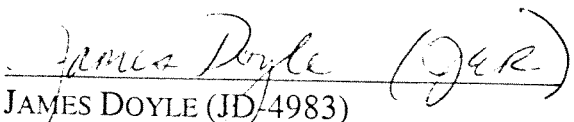
C. Enter judgment in favor of the United States pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), declaring that defendants W.R. Properties and W.R. Estates are also liable for all future response costs to be incurred by the United States in connection with the Site; and

D. Grant the United States such other relief as the Court deems just and proper.

CATHERINE R. MCCABE  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

ROSLYNN R. MAUSKOPF  
United States Attorney  
Eastern District of New York

By:

  
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OF COUNSEL:

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U.S. Environmental Protection Agency  
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New York, NY 10007-1866




## VERIFICATION OF COMPLAINT

I, Maria Jon, am employed by the United States Environmental Protection Agency as an Remedial Program Manager. I have been responsible for the EPA's response action at the Claremont Polychemical Superfund Site which is the subject of this Verified Complaint in Rem from 1998 to the present. I have reviewed EPA's files pertaining to this response action at EPA's office located at 290 Broadway, New York, NY including Action Memoranda, two Records of Decision, two Explanation of Significant Differences documents, and I also have personal knowledge pertaining to certain of the facts addressed herein. I swear under pains of perjury that the allegations set forth above are true and accurate to the best of my knowledge.

Date:

July 8, 2005

  
\_\_\_\_\_  
Maria Jon  
Remedial Program Manager  
U.S. Environmental Protection Agency  
290 Broadway  
20<sup>th</sup> floor  
New York, NY 10007



SIR:

PLEASE TAKE NOTICE that the within will be presented for settlement and signature to the Clerk of the United States District Court in his office at the UNITED STATES DISTRICT COURT U.S. Courthouse, 225 Cadman Plaza East, EASTERN DISTRICT OF NEW YORK

Brooklyn, New York, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at 10:30 o'clock in the forenoon.

Dated: Brooklyn New York,

\_\_\_\_\_, 20\_\_\_\_

United States Attorney,

Attorney for \_\_\_\_\_

To:

for \_\_\_\_\_

Attorney

SIR:

PLEASE TAKE NOTICE that the within is a true copy of \_\_\_\_\_ duly entered herein on the \_\_\_\_\_ day of \_\_\_\_\_, in the office of the Clerk of the Eastern District of New York,  
Dated: Brooklyn, New York \_\_\_\_\_, 20\_\_\_\_

United States Attorney,

Attorney for \_\_\_\_\_

To:

Civil Action No.

UNITED STATES DISTRICT COURT  
Eastern District of New York

UNITED STATES OF AMERICA,

Plaintiff,

- against -

WINDING ROAD ESTATES, INC., ET AL.,

Defendant.

COMPLAINT

ROSLYNN R. MAUSKOPF,

United States Attorney,  
Attorney for Plaintiff  
Office and Post Office Address,  
United States Courthouse  
One Pierrepont Plaza  
Brooklyn, New York 11201

Due service of a copy of the within \_\_\_\_\_ is hereby admitted.

Dated: \_\_\_\_\_, 20\_\_\_\_

Attorney for \_\_\_\_\_  
JAMES DOYLE, SAUSA  
(212) 637-3165

02-11-05

Complaint filed: July 12, 2005

3 Def's named (one is property see CASE)

EDNY/C+NO:

(LOOKS LIKE - 05-3278

put in ICIS 7/13/2005 - CIV-05-3278

PB

attached press release - because it has the  
date filed PB.